

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Digital Broadcast Content Protection

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MB Docket No. 02-230

**OPPOSITION OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
TO THE JOINT PETITION FOR RECONSIDERATION FILED BY THE
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, ET AL.**

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March 8, 2004

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of America, Inc.*

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INTRODUCTION AND SUMMARY

This opposition is in response to the Joint Petition for Reconsideration of the National Music Publishers' Association ("NMPA"), the American Society of Composers, Authors and Publishers, the Songwriters Guild of America, and Broadcast Music, Inc., filed in the above-captioned proceeding on December 31, 2003 (the "Joint Petition on the Broadcast Flag"). In their Joint Petition on the Broadcast Flag, the NMPA *et al.* object to the Commission's purported reliance on an *ex parte* letter filed by the Motion Picture Association of America, Inc., ("MPAA") in this docket on September 29, 2003. In their opposition, the NMPA *et al.* claim that the letter was improperly filed and made "factually incorrect" claims upon which the Commission erroneously relied. However, as demonstrated in this opposition, the MPAA's *ex parte* letter was properly filed and contained no factually incorrect assertions.

I. The MPAA's September 29 Letter Was Properly Filed

The NMPA *et al.* object that the MPAA's September 29, 2003 letter was improperly filed with respect to this proceeding because a copy was not provided to NMPA *et al.*, and because the Electronic Comment Filing System listed it as being filed on behalf of Fritz Attaway personally

as opposed to the MPAA as an organization.¹ However, neither of these claims imply that the letter was improperly filed.

There is no rule requiring service of *ex parte* presentations such as the MPAA's September 29 letter. Commission Rule 1.1206(a)(1) permits *ex parte* presentations to the Commission in proceedings such as the Notice of Proposed Rulemaking that was under consideration by the Commission in this docket on September 29. Under Rule 1.1202(b)(1), a written *ex parte* presentation is by definition one that "is not served on the parties to the proceeding." The Commission's rules, however, do provide for public notice of such a presentation, and those rules were followed here. Commission Rule 1.1206(b)(4) requires the Secretary to "place in the public file or record of the proceeding written *ex parte* presentations The Secretary shall issue a public notice listing any written *ex parte* presentations . . . received by his or her office relating to any permit-but-disclose proceeding." The Secretary announced the filing of the MPAA's September 29 letter in the Daily Digest on October 7, 2003, almost one month before the Commission adopted the Broadcast Flag regulation. Furthermore, the September 29 letter was made available through the Commission's ECFS website on or about the day it was submitted. There was no lack of notice to the public in this instance.

Nor was there any irregularity in the means by which the September 29 letter was filed with the Commission. Rule 1.49(f)(1)(i) permits *ex parte* letters in rulemaking proceedings to be filed electronically. Rule 1.1206(b)(1) provides that, in the case of written presentations in rulemaking proceedings governed by Section 1.49(f), a party making such a presentation must,

¹ The assertions of the NMPA, *et al.*, are made in their Joint Petition for Reconsideration of the National Music Publishers' Association, the American Society of Composers, Authors and Publishers, the Songwriters Guild of America, and Broadcast Music, Inc., in the Commission's "Plug & Play" proceedings (hereafter "Joint Petition on Plug & Play"), *see Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80 and PP Docket No. 00-67, FCC No. 03-225 (rel. Oct. 9, 2003). Those assertions are incorporated in the Joint Petition on Broadcast Flag by reference. *See* Joint Petition on Broadcast Flag at 3.

“no later than the next business day after the presentation, . . . file one copy of the presentation electronically; no additional paper copies need to be filed.” The September 29 letter was submitted within the required time period electronically, and it clearly identified the proceeding to which it related, indicated that a copy was being submitted to the Secretary for inclusion in the record, and was designated as an *ex parte* presentation through ECFS (and was so labeled by the Commission). There are no rules governing how the ECFS cover sheet must be completed. Therefore, the MPAA’s September 29 letter suffered from no procedural irregularities.

II. The MPAA’s September 29 Letter Was Factually Accurate

The NMPA *et al.* also raise two objections to the factual accuracy of the MPAA’s September 29 letter. First, they allege that the MPAA mistakenly described CD-quality digital audio outputs as “limited.”² Compressed AC3 multi-channel and 48 kHz/16-bit Linear PCM stereo digital audio outputs are “limited” in the sense that higher-resolution digital audio formats exist in the marketplace.³ As digital television broadcasting continues to evolve, new higher-quality digital audio formats may be standardized and implemented for use with digital broadcast television. With sufficient lead time, those new digital audio formats may be introduced in combination with encrypted digital audio outputs. Second, the NMPA *et al.* allege that “the MPAA’s professed concern about legacy digital audio equipment in the home is pure rhetoric,” and that no digital audio legacy problem exists that is any greater than the legacy digital television set problem.⁴ However, as demonstrated below, this is simply not the case.

² See Joint Petition on Plug & Play at 7.

³ Although not used for digital broadcast television, high-resolution, 96 kHz/24-bit multi-channel digital audio as delivered by the DVD-Audio and Super Audio CD formats offer sound quality surpassing that available over compressed AC3 and 48 kHz/16-bit Linear PCM digital audio outputs.

⁴ *Id.* at 7-9.

The legacy digital audio problem is quite real. There is an installed base of millions of home theater audio receivers systems in consumers' homes with unprotected AC3 or 48 kHz/16-bit Linear PCM digital audio inputs.⁵ These audio receivers accept unencrypted AC3 and 48 kHz/16-bit Linear PCM digital audio streams from a variety of sources, including DVD players, CD players, satellite set top boxes, and digital terrestrial television tuners. As a result, the digital audio inputs in consumers' existing products will simply cease to function with Marked or Unscreened Content if the digital audio outputs on digital television receivers are required to be protected. This would create havoc with consumers' existing equipment. For example, while it is true that all consumers' home theater audio receivers have stereo analog audio inputs, very few have multi-channel analog audio inputs sufficient to handle the six discrete channels of audio contained in a single AC3 digital audio connection. If the Broadcast Flag regulation required protected digital audio outputs, millions of consumers with home theater systems would be forced to switch to a down-mixed stereo analog audio connection instead of enjoying the discrete, multi-channel digital sound experience through their normal digital audio connection. In fact, their digital audio connections would continue to remain usable for DVD and conditional access content, resulting in a distinct competitive disadvantage for broadcasters with respect to paid conditional access services and prerecorded media in the marketplace for high-value content.

The NMPA *et al.* argue that, even if such a legacy exists, “the sunk costs of the existing legacy Digital Televisions that will only be usable with video analog inputs is almost twice as large as the sunk costs of the Home Theater in a Box units that will also be usable with analog

⁵ The Consumer Electronics Association reports that 32% of U.S. households have home theater audio systems. See Consumer Electronics Association, U.S. Household Penetration of Consumer Electronics Products, Jan. 2004.

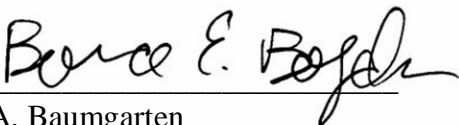
audio inputs.”⁶ This argument misconceives the legacy problem. Given that the Broadcast Flag regulation limits the outputs, not the inputs, of a Covered Demodulator Product, the legacy problem lies with those devices connected to the *digital outputs* of the television receiver, not those sending content to the *analog inputs* of a television receiver. In contrast to the millions of home theater audio receivers in consumers’ homes that have unprotected digital audio inputs, there are few consumer video devices (such as HDTVs, DVD recorders, or PVRs) in consumers’ homes that have unprotected digital video inputs used for displaying and/or recording the transport stream of broadcast digital television. There thus is no comparable legacy problem for audio-visual equipment, which is why the time is ripe to implement the Broadcast Flag regulation now.

CONCLUSION

The MPAA’s September 29 *ex parte* letter was properly filed and factually accurate, and no reconsideration of the Broadcast Flag ruling is appropriate based on the objections to that letter raised in the Joint Petition on Broadcast Flag.

Respectfully submitted,

MOTION PICTURE ASSOCIATION OF AMERICA, INC.

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⁶ Joint Petition on Plug & Play at 8-9.

CERTIFICATE OF SERVICE

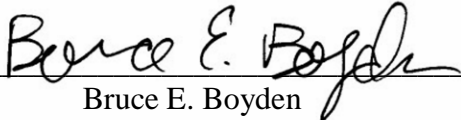
I, Bruce E. Boyden, hereby certify that a true and correct copy of the Opposition of the Motion Picture Association of America, Inc. to the Petition for Reconsideration Filed by the National Music Publishers' Association, *et al.*, was served on the following parties on March 8, 2004, by first-class mail, postage prepaid:

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